

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

SEAN P. TUCKER, dba TUXEDO
INNOVATIONS, TUXEDO CONCEPTS,
INNOVATIVE FRANCHISING, INC.,

Debtors.

WEST MILL CLOTHES, INC., a New York
Corporation, and TUXACCO, INC., a
Pennsylvania Corporation,

Plaintiffs,

vs.

SEAN P. TUCKER, dba TUXEDO
INNOVATIONS, TUXEDO CONCEPTS,
INNOVATIVE FRANCHISING, INC.,

Defendants.

Case No. 92-5-4057-MM

Chapter 7

Adversary No. 92-5-466

MEMORANDUM OPINION

INTRODUCTION

Before the Court is the defendant's Motion to Dismiss Second Amended Complaint for failure to state a claim for which relief can be granted under Fed. R. Civ. P. 12(b)(6). For the following reasons, the motion is denied.

FACTS

The debtor, Sean Tucker, is in the tuxedo rental and sales business. In February 1989, he entered into an agreement with the plaintiff, West Mill Clothes, Inc. ("West Mill"), whereby West

1 Mill would supply inventory to the debtor on credit. His original credit limit was \$3,000. When the
2 debtor requested an increase in his credit limit in the spring of 1989, West Mill requested a personal
3 guaranty and the guaranty of his mother. Tucker furnished the two guaranties in April 1989.

4 In December 1991, Tucker was delinquent on his account in the amount of \$85,000. The
5 parties completed negotiations for a payment plan in March 1992, and the debtor executed a
6 confession of judgment and agreement providing for scheduled payments. West Mill recorded a
7 UCC-1 covering the debtor's assets on March 16, 1992. However, Union Bank, which extended
8 secured financing to Tucker, had recorded a UCC-1 covering the debtor's assets on March 9, 1992.

9 Tucker defaulted on the agreement and payment schedule with West Mill and filed his
10 bankruptcy petition in June 1992. The bar date for filing dischargeability complaints was November
11 9, 1992.

12 The plaintiff timely filed the original complaint on August 26, 1992 to except its debt from
13 discharge under Sections 523(a)(2), (a)(4), and (a)(6), and amended the complaint on September 1,
14 1992. The first amended complaint alleges that the debtor promised security for the March 1992
15 renegotiated debt, misrepresented the value of the inventory, and misrepresented that there was no
16 prior security interest in the inventory. The defendant's answer asserts that West Mill agreed to
17 subordinate to conventional secured financing.

18 West Mill also filed suit in Superior Court against the defendant's mother on her personal
19 guaranty given in 1989 to secure the defendant's credit line. She filed a verified answer in October
20 1992 stating that she had neither signed nor authorized the guaranty. The defendant argues that the
21 plaintiff was on notice prior to the bar date that it had another potential claim against the defendant,
22 yet it delayed amendment of the first amended complaint. The plaintiff responds that it verified that
23 the guaranty was a forgery in December 1992 and thereafter promptly filed a motion to file a second
24 amended complaint, which the defendant did not oppose. On February 12, 1993, the Court granted
25 plaintiff leave to amend the complaint to add allegations of the defendant's forgery of his mother's
26 signature on the guaranty of the original debt. The plaintiff filed the amended complaint on February
27 19, 1993. The defendant's Motion to Dismiss Second Amended Complaint is brought under Rule
28 12(b)(6) on the basis that the claims raised in the second amended complaint are based on a

1 completely separate set of events and are, therefore, precluded by the November 9, 1992 bar date for
2 filing dischargeability complaints.

3 4 DISCUSSION

5 Fed. R. Civ. P. 15 (a) provides that once an answer has been filed, a party may amend a
6 pleading only by leave of court or by written consent of the adverse party, and leave shall be freely
7 given when justice so requires. This provision is liberally construed, and leave should be given absent
8 undue prejudice to the opposing party, undue delay, or bad faith. Foman v. Davis, 371 U.S. 178, 182
9 (1967). As a general rule, amendments are favored in order to facilitate a proper decision on the
10 merits. Conley v. Gibson, 355 U.S. 41, 48 (1957).

11 Fed. R. Civ. P. 15(c) permits an amended pleading to relate back to the date of the original
12 pleading if the assertions in the amended pleading arose out of the conduct, transaction, or
13 occurrence set forth in the original pleading. The purpose of this provision is to ensure proper notice
14 to the defendant of the claims against him. Andujar v. Rogowski, 113 F.R.D. 151, 155-56 (S.D.N.Y.
15 1986). The court may even permit amendments after the running of the limitations period where the
16 proposed amendment relates back to the same conduct, transaction, or occurrence set forth in the
17 original pleading. Oliner v. McBride's Industires, Inc., 106 F.R.D. 9, 12 (S.D.N.Y. 1985). This
18 principle also applies to complaints objecting to the dischargeability of a debt filed after the bar date if
19 the clear subject of both the original complaint and the amended complaint is the dischargeability of a
20 specific loan or debt. In re Englander, 92 Bankr. 425, 428 (Bankr. 9th Cir. 1988).

21 Under Fed. R. Civ. P. 15(c), if the original pleading sufficiently indicates the factual situation
22 out of which the claim arises, the amendment will relate back. In re Gunn, 111 Bankr. 291, 292
23 (Bankr. 9th Cir. 1990)(amendment allowed to assert § 727(a) action for concealing or failing to keep
24 adequate books or records where original complaint alleged § 523(a)(2) claim for fraud). New
25 factual allegations contained in an amended pleading will relate back if the allegations amplify the
26 facts alleged in the original pleading or set forth those facts with greater specificity. Oliner, 106
27 F.R.D. at 12. Where the new allegations go beyond such amplification, the critical question is
28 whether the original pleading gave the defendant fair notice of the material subsequently raised in the

1 amended pleading. Id. Resolution of this question requires an examination of whether there is a
2 common core of operative facts linking the amendments and the original complaint. Id. A general
3 nexus between the original and the amended complaints satisfies the "same transaction or
4 occurrence" requirement of Fed. R. Civ. P. 15(c). In re Gunn, 111 Bankr. at 293. Amendment is
5 permissible where the parties and their relationship remain the same, both complaints relate to the
6 same loan, and the claims in the amended complaint are closely identified with the claims in the
7 original complaint. Id.

8 The defendant argues that the new factual allegations set forth in the second amended
9 complaint are unrelated to the set of events pleaded in the original complaint. However, the parties
10 are the same, their relationship with respect to the debt sought to be nondischargeable is the same,
11 both complaints relate to the same debt, and the claims for nondischargeability are the same. It would
12 be inequitable to expect a party to plead facts to which it has no knowledge prior to discovery.
13 Where a plaintiff pleads based only on facts known to the plaintiff at the time, and discovery later
14 discloses additional facts, an amendment after the limitations period to incorporate the new facts may
15 relate back to the original timely pleading if the original pleading was sufficient to place the defendant
16 on notice of the claims asserted against the defendant. Rohm and Haas Co. v. Dawson Chemical Co.,
17 Inc., 557 F. Supp. 739, 823-25 (S.D. Tex. 1983), rev'd on other grounds, 599 F.2d 685 (5th Cir.
18 1979), cert. denied, 469 U.S. 851 (1984). The claims asserted in the original complaint reasonably
19 gave the defendant notice of the nature of the allegations against him in this proceeding.

20 21 CONCLUSION

22 The original complaint was sufficient to give the debtor notice of the claims asserted in the
23 second amended complaint. Under Fed. R. Civ. P. 15(c), the second amended complaint relates back
24 to the timely-filed original complaint. Therefore, the defendant's Motion to Dismiss Second Amended
25 Complaint is denied.